

When persons sell tangible personal property which they are not otherwise engaged in the business of selling, such transactions may be occasional sales not subject to ROT. See 86 Ill. Adm. Code 130.110. (This is a GIL.)

July 30, 2003

Dear Xxxxx:

This letter is in response to your letter dated December 11, 2002. We apologize for the delay in responding to your inquiry. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

This request for a General Information Letter Ruling is made on behalf of our client (hereinafter 'The Taxpayer'), and requests rulings that Taxpayer's sale of a used aircraft is entitled to the trade-in credit reduction on its purchase of a new aircraft for purposes of the Retailer's Occupation Tax/Use Tax. Neither an audit nor litigation is pending with the Illinois Department of Revenue (hereinafter 'Department') involving the Taxpayer or the issues presented below.

STATEMENT OF FACTS

Background

The Taxpayer has an aircraft that it has used, and sold, and intends to purchase a new aircraft to replace its old aircraft. The taxpayer also has additional used aircraft that it intends to sell, and additional new aircraft that it intends to buy, using a substantially similar structure as the format detailed below.

For Federal Income Tax purposes, the taxpayer intends to structure the sale and replacement of its old and new aircraft as a deferred like-kind exchange ('LKE') pursuant to IRC Sec. 1031. Accordingly, the taxpayer has engaged the services of a Qualified Intermediary ('QI') (as that term is defined under Reg. Sec. 1.1031(k) and 1.1031 (b)) to facilitate its exchange. The QI's involvement is two-fold. First, the QI has established a wholly owned LLC to effectuate the transfer of old and new aircraft between the taxpayer and the LLC and the LLC and the buyer and seller of the taxpayer's old and new aircraft. Secondly, the QI and the taxpayer have entered into a tax deferred exchange agreement as required under IRC Sec. 1031.

The LLC, created by the QI, has registered with the Illinois Department of Revenue as a retailer in aircraft. The LLC was established to facilitate a federal income tax free exchange of aircraft under IRC Sec. 1031. For example, due to softness in the used aircraft market, the taxpayer may be forced to take delivery of its new aircraft before it is able to locate 'end user' buyers for its old aircraft. In this event, the taxpayer will exchange (or trade-in) old for new aircraft with the LLC within the time constraints of IRC Sec. 1031. By utilizing the LLC, the taxpayer will have the opportunity to accomplish a tax free exchange of its used aircraft at the time its new aircraft is ready for delivery (or at another time within the 180 day like-kind exchange limit). In this situation, without the LLC, the taxpayer might otherwise be unable to avail itself of the federal income tax benefits available under IRC Sec. 1031.

In order to qualify for LKE treatment for federal income tax purposes, the QI and the taxpayer entered into a 'tax deferred exchange agreement' under which the taxpayer assigned its rights to sell the old aircraft to the QI, and assigned its rights to buy the new aircraft to the QI. The rights assigned to the QI by the taxpayer are never acted upon, as the QI does not exercise the rights, and does not take title or possession of the aircraft.

Proceeds due the taxpayer from the sale of the old aircraft to the LLC are placed into an exchange account, similar to an escrow account, controlled by the QI on behalf of the taxpayer. The proceeds in the exchange account are held until the time of the purchase of the new aircraft, where the proceeds are first applied to any moneys due the QI, with the remainder disbursed to the LLC. Notification of this assignment of rights was provided to the LLC by the taxpayer.

Sale of used aircraft

The taxpayer and the LLC, and the LLC and the buyer of the taxpayer's old aircraft entered into identical purchase agreements (copy attached) by which the taxpayer transferred title in the old aircraft to the LLC (T1 on the attached schematic), and the LLC transferred title to the buyer (T2 on the attached schematic). The purchase agreements were identical in terms. Each purchase agreement provided that the purchaser was buying the aircraft 'as is', the seller was required to repair listed defects, the purchaser had a right to inspect and test the aircraft prior to purchase, the purchaser had to transfer funds to cover the purchase price, and the seller had to deliver a warranty bill of sale conveying title to the purchaser free of any liens or encumbrances. Both agreements also included language that allowed either party to assign rights under the purchase agreements to a QI in order to effectuate a like-kind exchange under IRC Sec. 1031. The purchase price of the aircraft on the two contracts was identical. The LLC/QI was compensated a flat fee for its exchange facilitation services.

The LLC provided a resale certificate to the taxpayer, so that the taxpayer did not charge tax on its sale of the aircraft. The LLC and the taxpayer executed a completed FAA bill of sale. While title and possession of this aircraft transferred outside of Illinois, Illinois use tax will be due on this aircraft as the LLC is a retailer of aircraft, and the third party buyer intended to hangar and register the aircraft in Illinois. The LLC and the third party buyer executed a completed FAA bill of sale. In this instance (but not necessarily on the future sales of used aircraft where an ultimate buyer has not been identified), the title will transfer from taxpayer to LLC, and then almost immediately from LLC to buyer.

The taxpayer and the LLC completed a form, titled 'Advance Trade-In Contractual Obligation to Purchase' (blank copy attached) that established the date of the trade-in, the value of the trade-in, the date that the trade-in credit would expire, and the agreement that in connection with the transfer of title and ownership of the aircraft by the taxpayer to the LLC, that the taxpayer would purchase another aircraft from the LLC within 9 months, and the LLC would utilize a trade-in credit on that subsequent aircraft sale equal to the value of the traded in aircraft.

Purchase of new aircraft

For the purchase of the new aircraft, the taxpayer will either assign its contract rights with the aircraft manufacturer to the LLC, or the aircraft manufacturer and the LLC will enter into a contract to purchase the aircraft, and then the taxpayer will enter into a contract with the LLC to purchase the same aircraft.

The aircraft manufacturer and the LLC will enter into a purchase agreement by which the aircraft manufacturer transfers title in the aircraft to the LLC (T3 on the attached schematic). The LLC and the taxpayer will also enter into a purchase agreement by which the LLC transfers title to the taxpayer (T4 on the attached schematic). The purchase agreements will be identical in terms, so that the purchaser has the right to inspect and test the aircraft prior to purchase, the purchaser has to transfer funds to cover the purchase price, and the seller has to deliver a warranty bill of sale conveying title to the purchaser free of any liens or encumbrances. Both agreements also will include language that allows either party to assign rights under the purchase agreements to a QI in order to effectuate an LKE. The purchase price of the aircraft on the two contracts will be identical, as the compensation to the LLC/QI is a flat fee for structuring/effectuating the transaction.

The new aircraft will be purchased from an aircraft manufacturer by the LLC, which will provide the manufacturer a resale certificate so that no tax is charged. While title and possession of the aircraft will occur outside Illinois, so that Illinois sales tax is not due, Illinois use tax will be due, as the LLC is a retailer of aircraft, and the aircraft will be registered in Illinois. Title will transfer from aircraft manufacturer to LLC, and then almost immediately from LLC to taxpayer.

The LLC will record in its books and records the purchases of used aircraft from the taxpayer, and the sale of the new aircraft to the taxpayer in a single transaction. The use tax return filed by the taxpayer upon the registration of the new aircraft in Illinois will reflect the application of the advance trade-in.

RELEVANT AUTHORITY

35 ILCS 105/2 Definitions.--

'Selling price' means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property other than as hereinafter provided, and services, but not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold, and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever, but does not include interest or finance charges which appear as

separate items on the bill of sale or sales contract nor charges that are added to prices by sellers on account of the seller's tax liability under the 'Retailers' Occupation Tax Act', or on account of the seller's duty to collect, from the purchaser, the tax that is imposed by this Act, or on account of the seller's tax liability under Section 8-11-1 of the Illinois Municipal Code, as heretofore and hereafter amended, or on account of the seller's tax liability under the 'County Retailers' Occupation Tax Act'. Effective December 1, 1985, 'selling price' shall include charges that are added to prices by sellers on account of the seller's tax liability under the Cigarette Tax Act, on account of the seller's duty to collect, from the purchaser, the tax imposed under the Cigarette Use Tax Act, and on account of the seller's duty to collect, from the purchaser, any cigarette tax imposed by a home rule unit.

Illinois Regulation, **86 Ill. Adm. Code 130.425. Traded-In Property.--**

(a) 'Gross receipts' means the 'selling price' or 'amount of sale'. 'Selling price' or the 'amount of sale' means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property other than as hereinafter provided, and services, but not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold, and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever. 'Selling price' does not include charges that are added to prices by sellers on account of the seller's tax liability under the Home Rule Municipal Retailers' Occupation Tax Act [65 ILCS 5/8-11-1], the Non-Home Rule Municipal Retailers' Occupation Tax Act [65 ILCS 5/8-11-1.3], the Home Rule County Retailers' Occupation Tax Act [55 ILCS 5/5-1006], Section 4 of the Water Commission Act of 1985 [70 ILCS 3720/4], Section 5.01 of the Local Mass Transit District Act [70 ILCS 3610/5.01] and Section 4.03 of the Regional Transportation Authority Act [70 ILCS 3615/4.03].

(b) The phrase 'like kind and character' includes, but is not limited to, the trading of any kind of motor vehicle on the purchase of any kind of motor vehicle, or the trading of any kind of farm implement on the purchase of any kind of farm implement, while not including a kind of item which, if sold at retail by that retailer, would be exempt from Retailers' Occupation Tax and Use Tax as an isolated or occasional sale.

(c) A motor vehicle traded to a farm implement dealer for a farm implement would not qualify for the exemption unless such farm implement dealer is also a motor vehicle dealer because the farm implement dealer's sale of the motor vehicle would be exempt as an isolated or occasional sale. A farm implement traded to a motor vehicle dealer for a motor vehicle would not qualify for the exemption unless such dealer is also a farm implement dealer because the motor vehicle dealer's sale of the farm implement would be an exempt isolated or occasional sale. A farm implement traded for a motor vehicle, or a motor vehicle traded for a farm implement, would qualify for the exemption if the seller is engaged in business both as a motor vehicle dealer and a farm implement dealer. Agricultural produce or animals traded for a motor vehicle or for a farm implement would not qualify for the exemption.

(d) The real test is whether the retail sale of the traded-in tangible personal property by the person who accepts it in trade would be subject to Retailers' Occupation Tax, or whether such sale would be exempt as an isolated or occasional sale (see 130.110). In

the former event, the tangible personal property qualifies for the trade-in exemption. In the latter event, it does not.

(e) The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale, where the item that is traded-in is of like kind and character as that which is being sold, shall not be considered to be 'gross receipts' subject to the Retailers Occupation Tax and need not be included in the seller's return, or may be deducted in the return from gross receipts if included in gross receipts as reported in the return. The value of traded-in real estate or intangible personal property is not deductible from gross receipts in computing Retailers' Occupation Tax liability.

(f) The Retailers' Occupation Tax applies to the business of selling tangible personal property at retail in this State whether such property is new or used and regardless of how the seller may have acquired such property (i.e., by way of purchase, as a trade-in or in some other manner).

(g) No trade-in credit may be taken for amounts representing the proceeds due or paid under an insurance contract if title to missing, damaged or destroyed property is transferred to an insurer by operation of law or contract, i.e., the insurance claim value of property may not be used as a trade-in credit when an insured purchases tangible personal property to replace property which has been lost or destroyed.

(h) No trade-in credit may be taken for that portion of the purchase price of a new automobile representing a settlement which the purchaser has obtained from an automobile manufacturer pursuant to the New Vehicle Buyer Protection Act [815 ILCS 380]

(i) When tangible personal property is sold that is covered by a 'core charge,' the full retail selling price of such property, including the core charge, is subject to Retailers' Occupation Tax. The fact that a component of the gross receipts from the sale of the tangible personal property is labeled a 'core charge' does not change the taxable nature of the transaction. A core charge is regarded as a predetermined trade-in value. Tax should be charged on the core charge, but a deduction may be taken for the traded-in tangible personal property actually received after the date of sale if books and records clearly relate the trade-in to the sales transaction. Such a situation would occur when the replacement property is purchased prior to the time the used property is returned. If, on the other hand, the used property is traded in at the time of purchase, tax is due on the purchase price, less the allowance for the trade-in.

(Amended at 6 Ill. Reg. 15225, effective December 3, 1982; amended at 15 Ill. Reg. 6621, effective April 17, 1991; amended at 24 Ill. Reg. 15104, effective October 2, 2000.)

Illinois Regulation, 86 Ill. Adm. Code 130.455. Motor Vehicle Leasing and Trade-In Allowances.--

(a) *Definitions:* Advance Trade Credit means a trade-in credit earned as the result of the trade-in of a vehicle on the future purchase of a vehicle where the purchaser is contractually obligated to make a purchase within 9 months after the advance trade.

Dealer means any person engaged in the business of selling vehicles at retail.

Dealer Credit means an advance trade credit maintained on the books of the dealer where the purchaser is contractually obligated to make a purchase within 9 months after the advance trade.

Lease means a true lease of a vehicle for a term of more than one year.

Lessee means any person that acquires possession of a vehicle pursuant to a lease.

Lessor means any person engaged in the business of leasing vehicles to other persons.

Purchaser means any person, whether an individual consumer or a lessor, that purchases a vehicle from a dealer.

(b) *Valuation of Traded-in Vehicles*

(1) The selling price of a vehicle does not include *the value of or credit given* for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold. *The value of a* traded-in vehicle is the amount of value assigned to the vehicle without regard for outstanding debt owed on the traded-in vehicle by any party. (1 of the Act)

(2) The amount of *credit given* for a traded-in vehicle is the value assigned to the vehicle, reduced by any cash payments received by the purchaser or title holder of the traded-in vehicle. The reduction of the value by offsetting cash payments results in the actual *credit given* for the traded-in vehicle. Where cash payment is made to the purchaser or the title holder of the traded-in vehicle, the trade-in credit is equal to the actual *credit given* for the vehicle. (1 of the Act)

Example:

	Value of Trade-In	Credit Given	Trade-In Credit
Trade-In Vehicle	\$10,000		\$10,000
With \$3,000 Lien	\$10,000		\$10,000
With \$2,000 Cash Back to Purchaser	\$10,000	\$8,000	\$8,000

(c) *Use of Trade-in Credits*

(1) A dealer may reduce his gross receipts by the *value of or credit given* for a traded-in motor vehicle where: (1 of the Act)

(A) An individual trades a motor vehicle he owns on the purchase of a new or used motor vehicle;

(B) A lessor trades a motor vehicle he owns on the purchase of a new or used motor vehicle for subsequent lease:

(C) A lessor or other purchaser trades a motor vehicle owned by a prospective lessee or a third party where the prospective lessee or third party assigns the vehicle to the dealer and provides written authorization for the trade to the dealer, for the benefit of the lessor or other purchaser. The written authorization provided by the prospective lessee or third party should be specific to the immediate transaction, identifying the vehicle to be purchased by the lessor or other purchaser. A prospective lessee or third party trade-in authorization may not be used in conjunction with an advance trade transaction; or

(D) A motor vehicle is traded-in as described in sub(c)(1)(B) or (c)(1)(C) of this Section, and the dealer executes the lease but assigns the lease to a purchasing lessor, if the following requirements are part of the transaction:

(i) the lease agreement states that the lease and vehicle will be assigned to the lessor making the trade of the motor vehicle, and

(ii) title is issued directly to the lessor making the trade of the motor vehicle and not to the dealer, so that the dealer remains outside the chain of title.

(2) A dealer may not reduce his gross receipts by the *value of or credit given* for a traded-in motor vehicle where: (1 of the Act),

(A) The dealer is the owner (meaning the dealer holds either title or certificate of origin) of the traded-in motor vehicle;

(B) The trade-in vehicle was disposed of in a sales transaction predating the trade but was not identified by contract or written agreement as an advance trade-in vehicle as required in sub(d) of this Section; or

(C) The party holding title and offering the vehicle or vehicles for trade on behalf of another purchaser or lessor, as described in sub(c)(1)(C) of this Section, would not be entitled to the isolated or occasional sale exemption if such vehicle or vehicles were sold by that party, rather than traded.

(d) *Advance Trade-Ins*

A transaction may constitute an advance trade-in if, at the time the vehicle is traded to the dealer, the purchaser becomes contractually obligated to purchase one or more vehicles from the dealer within 9 months after the date of the advance trade-in transaction. Advance trade credits not used within the time specified expire and may not be used subsequent to the 9 month credit period. Advance trade credits are non-transferable.

(1) In order to apply the trade-in credit toward the purchase price of a vehicle, the documents recording the purchaser's contractual obligation to purchase need not specify the make, model or purchase price of a vehicle to be purchased, only that the purchaser is under an obligation to purchase within the specified amount of time.

(2) Advance trade-in credit given by the dealer to the purchaser in the amount of the *value of or credit given* for a traded-in vehicle at the time of the advance trade-in may be in the form of dealer credit or cash, and will not affect the purchaser's ability to apply the

advance trade credit toward the purchase of one or more vehicles, so long as the purchaser is contractually obligated to purchase a vehicle from the dealer within the time specified. In completing the transaction, the purchaser may pay the dealer cash or other consideration for the purchase price of a vehicle or vehicles purchased. (1 of the Act)

(3) Documentation evidencing an advance trade-in transaction must include the following: the contract establishing the *value of or credit given* for a traded-in vehicle, the obligation to purchase a vehicle, and the date of expiration of the advance trade-in credit; the bill of sale for the traded-in vehicle; and the appropriate sales or use tax return evidencing the purchase of the new or used vehicle and recording the application of the advance trade-in credit. Advance trade-in transactions may not be structured so that the purchaser is not the owner of the automobile offered for trade. (1 of the Act)

(e) *Deferred Trade-Ins*

No trade-in credit may be used in a transaction where the sales or use tax return does not reflect that a trade was offered at the time of the sales transaction. The appropriate sales or use tax return cannot be amended to reflect the *value of or credit given* for a vehicle offered for trade subsequent to the completion of the sales transaction. (1 of the Act)

(f) *Multiple and Split Trade-In Transactions*

(1) *Multiple Trade-In Transactions*

A purchaser may utilize a trade-in credit when trading in more than one vehicle to a dealer on the purchase of a single new or used vehicle. The dealer may use the cumulative trade-in credits from the traded-in vehicles to reduce gross receipts from the sale of the newly purchased vehicle so long as the trade-ins and sale are recorded as a single transaction.

(2) *Split Trade-In Transactions*

A purchaser may utilize a trade-in credit when trading in a single vehicle to a dealer on the purchase of more than one new vehicle. The dealer may split the amount of the trade-in credit from the traded-in vehicle, and apply it toward the purchase price of one or more new vehicles so long as the trade-in and purchases are recorded as a single transaction. The amount of trade-in credit to be applied to each new vehicle will be determined by the dealer and purchaser.

(3) *Combined Transactions*

A multiple trade-in transaction or split trade-in transaction may only be used in conjunction with an advance trade-in transaction if the transfer of all vehicles involved in the trade are recorded as a single transaction and the purchaser is contractually obligated to purchase a vehicle from the dealer within the specified period of time.

(g) *Documentation of Trade-In Credits*

Documentation and records evidencing a trade-in credit utilized for a particular transaction must be retained by the dealer and the purchaser and shall be made available to the Department for inspection or audit. With the exception of advance trade-in transactions, where a vehicle is offered for trade by a person other than the purchaser for the benefit of the purchaser, the owner of the vehicle must give written authorization that the vehicle is being offered for trade for the benefit of the purchaser. The written authorization must be specific to the transaction and must identify the vehicle for which the owner's vehicle is being traded.

(Source: Added at 18 Ill. Reg. 16866, effective Nov. 7, 1994)

General Information Letter, ST 01-0126-GIL. (Application of motor vehicle trade-in rules to aircraft)

Administrative Hearings Decision UT 02-1. (Lack of transfer of title negated trade-in argument, application of form over substance)

Administrative Hearings Decision UT 01-3. (QI treated as retailer, and viewed as seller of aircraft in LKE situation)

Weber-Stephen Products, Inc. v. Dept. of Revenue 756 N.E.2d 321(1st. Dist. 2001). (Transfer of title reflected in bill of sales provided evidence of taxable sale)

Superior Coal Co. v. Dept. of Finance, 377 Ill. 282 (1941). (Illinois Supreme Ct. rejected application of substance over form in sales tax case).

Jl Aviation, Inc. v. Dept. of Revenue, unpublished decision (1st. Dist. 2002). (Application of substance over form in LKE transaction resulted in occasional sale treatment for sales tax purposes)

TAXPAYER'S CONCLUSIONS

Based upon the authority cited above, taxpayer's sale of used aircraft to LLC constitutes a valid advance trade-in, and the traded-in price of the aircraft can be deducted when calculating the Illinois sales tax due on the sale by LLC of the new aircraft to the taxpayer. The form of the transaction should lead to this conclusion.

RULINGS REQUESTED

- I. The transfer of title of the used aircraft by LLC to third party buyer constitutes a sale at retail, and the transfer of title of the new aircraft by the LLC to the Taxpayer constitutes a sale at retail.
- II. The sale of the aircraft by the Taxpayer to the LLC described above constitutes a valid advance trade-in, under 86 Ill. Adm. Code Secs. 130.425 and 130.455, where either the taxpayer assigns its contract rights to purchase the new aircraft to LLC, or where the LLC and the aircraft manufacture enter into a separate agreement to purchase the new aircraft.

If you have any questions or require additional documentation please call me to discuss.

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax Act imposes a tax upon persons who are engaged in the occupation of selling tangible person property at retail. See 35 ILCS 120/1 et seq. Under Illinois law, a trade-in credit is available when the purchaser trades in tangible personal property of like kind and character as that which is being sold. See 86 Ill. Adm. Code 130.425.

Section 130.455(d) of the Department's administrative rules regarding advance trade-ins provides:

"d) Advance Trade-Ins

A transaction may constitute an advance trade-in if, at the time the vehicle is traded to the dealer, the purchaser becomes contractually obligated to purchase one or more vehicles from the dealer within 9 months after the date of the advance trade-in transaction. Advance trade credits not used within the time specified expire and may not be used subsequent to the 9 month credit period. Advance trade credits are non-transferable.

- 1) In order to apply the trade-in credit toward the purchase price of a vehicle, the documents recording the purchaser's contractual obligation to purchase need not specify the make, model or purchase price of a vehicle to be purchased, only that the purchaser is under an obligation to purchase within the specified amount of time.
- 2) Advance trade-in credit given by the dealer to the purchaser in the amount of the *value of or credit given* for a traded-in vehicle at the time of the advance trade-in may be in the form of dealer credit or cash, and will not affect the purchaser's ability to apply the advance trade credit toward the purchase of one or more vehicles, so long as the purchaser is contractually obligated to purchase a vehicle from the dealer within the time specified. In completing the transaction, the purchaser may pay the dealer cash or other consideration for the purchase price of a vehicle or vehicles purchased. (Section 1 of the Act)
- 3) Documentation evidencing an advance trade-in transaction must include the following: The contract establishing the *value of or credit given* for a traded-in vehicle, the obligation to purchase a vehicle, and the date of expiration of the advance trade-in credit; the bill of sale for the traded-in vehicle; and the appropriate sales or use tax return evidencing the purchase of the new or used vehicle and recording the application of the advance trade-in credit. Advance trade-in transactions may not be structured so that the purchaser is not the owner of the automobile offered for trade. (Section 1 of the Act)"

The reason that the Department's rules allow for advance trade-ins of vehicles is because vehicles are normally titled and registered and the sales of such items are reported on individual transaction reporting returns which can be more readily traced and accounted for than other types of tangible personal property. Other types of tangible personal property (such as aircraft) that are required to be titled or registered with an agency of this State or the federal government and are reported on individual transaction reporting returns would likewise also be subject to the allowance of advance trade-ins if all of the requirements set out at 86 Ill. Adm. Code 130.455(d) are followed.

In the scenario described in your letter, the qualified intermediary has created an LLC to effectuate the transfer of the aircraft. The LLC has registered with the Department as a retailer of aircraft. It is difficult to ascertain from the documents attached to your letter when your client entered into the agreement or will enter into the agreement to purchase the new aircraft from the LLC. If your client is contractually obligated to purchase a new aircraft from the aircraft retailer (LLC) within 9-months of the date of the trade-in of the used aircraft and all of the requirements of Section 130.455(d) of the Department's administrative rules regarding advance trade-ins have been met, then the sale of the used aircraft to the aircraft retailer will generally be considered an advance trade-in. Please note that your client's assignment of its rights to purchase the new aircraft does not impact the requirements for an advance trade-in.

For your information, please be aware that Public Act 93-0024 creates an Aircraft Use Tax Law that imposes a use tax on aircraft used in this State that is acquired by gift, transfer, or purchase after June 30, 2003. This tax does not apply if the use of the aircraft is otherwise taxed under the Use Tax Act. The tax also does not apply if the aircraft is bought and used by a governmental agency or a society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes; if the use of the aircraft is not subject to the Use Tax Act by reason of subsection (a), (b), (c), (d), or (e) of Section 3-55 of that Act dealing with the prevention of actual or likely multistate taxation; or if the transfer is a gift to a beneficiary in the administration of an estate and the beneficiary is a surviving spouse. See Section 1-15 of the Aircraft Use Tax Law.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk